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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,515	03/14/2001	Steven C. Fustolo	FUST-1	4531

7590

10/23/2003

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EXAMINER

SAADAT, CAMERON

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 10/23/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/808,515

Applicant(s)

FUSTOLO, STEVEN C.

Examiner

Cameron Saadat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

In response to amendment filed 8/1/03, claims 1-32 are pending in this application.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-5, 8, 10-18, 23-31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pellegrino et al. (U.S. Patent No. 6,149,441; hereinafter **Pellegrino**) in view of DeLaHuerga (U.S. Patent Application Publication 2002/0116509 A1).

Regarding claims 1 and 32, Pellegrino discloses a system and method for delivering an educational program to a participant at a remote site, said system comprising a server computer 20 having educational program software; a client computer 21 connected to the server computer over a network, said server computer interacting with the client computer to deliver an educational program to the participant; a prompting means for prompting the participant for a response to access the educational program (see Fig.

3). It does not explicitly state the feature of prompting the participant for a response during the educational program. However, DeLaHuerga discloses an information system network for delivering

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information to a participant at a remote site, wherein the participant is prompted for a proper response *during* use of the information system to avoid termination of access (Page 13, paragraph 0166). Although the information content delivered over the network in DeLaHuerga is not directed toward educational materials, it would be obvious to implement the prompting means during the use of any network-accessed information from a client computer. The motivation for doing so would have been to further protect the system in the situation where the authorized participant logs onto a terminal and leaves the terminal momentarily, and wherein continuous prompting for a proper response during the use of the information system would thwart an unauthorized user from accessing the terminal under the guise of the authorized participant (see DeLaHuerga, page 8, paragraph 0088).

Regarding claims 2-5, DeLaHuerga further teaches a system wherein prompting of the participant has a randomness factor (as per claim 2), at random time intervals (as per claim 3), and thus inherently producing a randomness factor in terms of the number of prompts generated during a session (as per claim 4). It further teaches prompting at a prescribed time (as per claim 5), (see page 13, paragraph 0166); further requires a response to the prompting within a time limit (as per claim 13), (see page 14, paragraph 0172). Hence, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the prompting described in Pellegrino by providing random or prescribed prompting, with a response time limit, during the educational program, in light of the teachings of DeLaHuerga. The motivation for doing so would have been to further protect the system in the situation where the authorized participant logs onto a terminal and leaves the terminal momentarily, and wherein continuous prompting for a proper response would thwart an unauthorized user from accessing the terminal under the guise of the authorized participant (see DeLaHuerga, page 8, paragraph 0088).

Regarding claim 14, the combination of Pellegrino and DeLaHuerga teaches a prompting means that requires a participant to respond within a time limit. It would have been an obvious matter of design choice as to specifying a time value for the time limit wherein no stated problem is solved or unexpected

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result is obtained by prescribing a 30 second time limit. Furthermore, regarding claim 15, DeLaHuerga teaches a system wherein prompting occurs at random times throughout the day. Although DeLaHuerga does not specify a value for the frequency of prompting, is the examiner's position that it would have been an obvious matter of choice well within the capabilities of one skilled in the art to provide at least one prompt within a two-hour period, thereby balancing between the desire to provide increased number of prompts to increase security while avoiding constant interruption to the participant's educational program.

Regarding claims 8 and 10, Pellegrino discloses a system wherein response to prompting is acquired with input devices including a keyboard and mouse (column 6, lines 60-61).

Regarding claim 11, Pellegrino discloses a system wherein the response to the prompting means is personal identification information of the participant (column 9, lines 20-27).

Regarding claim 16, Pellegrino discloses a system wherein the server computer further comprises a verification storage component 71.

Regarding claims 12 and 17, Pellegrino discloses a response comprising a participant's personal identification information (as per claim 12), wherein the server computer further comprises a verification storage component 71 (as per claim 16). Pellegrino does not specify what type of personal identification is required within a password. It is the examiner's position that it would have been an obvious matter of choice well within the capabilities of one skilled in the art to choose a type of personal identification, such as a social security number or any other password that distinguishes one participant from another. Furthermore these types of personal identification are analogous and thereby provide no criticality with respect to the invention.

Regarding claim 18, Pellegrino discloses a system wherein personal identification information of a verification storage component 71 is compared with the responses from the prompting means 120 and 122 (see Fig. 3).

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Regarding claim 23, Pellegrino discloses a system wherein the network is the Internet 26.

Regarding claim 24, Pellegrino discloses a system wherein the client computer includes a standard Web browser software 98 for interacting with the prompting means of the server (see Fig. 3)

Regarding claim 25, Pellegrino discloses a system wherein the client computer includes a standard Web browser software for interacting with the educational program software (see Fig. 4)

Regarding claim 26, Pellegrino discloses a system wherein the educational program is stored on the server computer and delivered over the network (see Fig. 1, refs. 20, 64, 21).

Regarding claim 27, Pellegrino discloses a system wherein at least a portion of educational program is stored on storage means 36 at the client computer 21.

Regarding claim 28, Pellegrino discloses a system wherein at least a portion of the educational program stored on the storage means at the client computer may be controlled over a network by the educational program software on the server computer (column 3, lines 1-8).

Regarding claims 29-31, Pellegrino discloses a system wherein the storage means is a CD-ROM or magnetic tape. Although Pellegrino does not explicitly specify a DVD as a means of storage, it is the examiner's position that these storage means are notoriously old and well known. Hence, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the CD-ROM storage means described by Pellegrino, by providing a DVD storage means in order to store more information.

4. **Claims 6-7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pellegrino et al. (U.S. Patent No. 6,149,441; hereinafter Pellegrino) in view of DeLaHuerga (U.S. Patent Application Publication 2002/0116509 A1), further in view of Belknap et al. (U.S. Patent No. 6,489,979; hereinafter Belknap).**

The combination of Pellegrino and DeLaHuerga discloses a system for delivering an educational program to a client computer, while providing prompting means during the educational program. It is not

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explicitly stated that the client computer is a "non-pc" computer system (as per claim 6), or a Web TV computer system (as per claim 7), or that the input means comprises a TV remote. However, Belknap teaches that it is old and well known to deliver educational materials to a non-computer interface (column 1, lines 50-51), and to use Web TV wherein a remote is utilized as the input means (column 2, lines 1-9). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the client computer described in Pellegrino, by providing a Web TV interface, in light of the teachings of Belknap, thereby allowing users untrained in the computer arts to access data within a digital library using a more user friendly interface.

5. **Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pellegrino et al. (U.S. Patent No. 6,149,441; hereinafter Pellegrino) in view of DeLaHuerga (U.S. Patent Application Publication 2002/0116509 A1), further in view of Lee et al. (U.S. Patent No. 6,064,856); hereinafter Lee).**

The combination of Pellegrino and DeLaHuerga discloses a system for delivering an educational program to a remote location, while providing prompting means during the educational program. Neither reference explicitly describes a bookmark storage means. However, Lee teaches a system for delivering an educational program, wherein a participant may stop the educational program and record the time-indexed position in a bookmark storage means (column 6, lines 42-47). In view of Lee, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the delivery of educational program described in the combination of Pellegrino and DeLaHuerga, by providing a bookmark storage means, thereby allowing a participant to stop the delivery of the educational program while allowing him/her to continue, at a later time, where he/she left off.

6. **Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pellegrino et al. (U.S. Patent No. 6,149,441; hereinafter Pellegrino) in view of DeLaHuerga (U.S. Patent Application Publication 2002/0116509 A1), further in view of Linton (U.S. Patent No. 6,282,404)**

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The combination of Pellegrino and DeLaHuergera discloses a system for delivering an educational program to a remote location, while providing prompting means during the educational program. DeLaHuergera briefly discusses clocking means 254. It does not explicitly disclose a clocking means to track a duration of an educational program viewed by a participant. However, Linton discloses a clocking means to track a duration of an educational program viewed by a participant (as per claim 20) at a viewing speed (as per claim 21); and tracking a total duration including a sum of each duration of a multiply viewed segment of the educational program (as per claim 22), See (column 6, lines 59-62; Fig. 14). In view of Linton, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the clocking means described in the combination of Pellegrino and DeLaHuergera, by providing clocking means to track the duration in which participants view the educational program, thereby providing progress reports indicating a participant's completion of educational segments, along with verification data comprising date and time duration.

Response to Arguments

7. Applicant's arguments filed 8/1/05 have been fully considered but they are not persuasive.

Applicant asserts that the prompting means of the present claimed invention monitor and *verify that a participant actively works through the educational program*; and provides a system for delivering an educational program in which program credit is awarded on the basis of program viewing rather than on the basis of passing specific examinations. Although this assertion appears to distinguish applicant's invention from the cited prior art, it is not presented in the claim language.

It is further asserted by the applicant that DeLaHuergera does not teach or suggest prompting means for prompting a participant for a response *during an educational program*. The standard of patentability is what the prior art, taken as a whole, suggests to an artisan at the time of the invention. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097, 231 USPQ 375, 379 (Fed. Cir. 1986). The question is not only what the references expressly teach, but what they would collectively suggest to one of ordinary skill

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in the art. *In re Simon*, 461 F.2d 1387, 1390, 174 USPQ 114, 116 (CCPA 1972). In this case Pellegrino discloses a system and method for delivering an educational program to a participant at a remote site; and a prompting means for prompting the participant for a response to access the educational program. It does not explicitly state the feature of prompting the participant for a response *during* the educational program. However, DeLaHuerger discloses an information system network for delivering information to a participant at a remote site, wherein the participant is prompted for a proper response *during* use of the information system to avoid termination of access (Page 13, paragraph 0166). Although the information content delivered over the network in DeLaHuerger is not directed toward educational materials, it would be obvious to implement the prompting means during the use of any network-accessed information from a client computer. The motivation for doing so would have been to further protect the system in the situation where the authorized participant logs onto a terminal and leaves the terminal momentarily, and wherein continuous prompting for a proper response during the use of the information system would thwart an unauthorized user from accessing the terminal under the guise of the authorized participant (see DeLaHuerger, page 8, paragraph 0088).

Applicant further believes that DeLaHuerger is not prior art with respect to the instant patent application since DeLaHuerger has a later filing date and publication date than the instant patent application. However, it is noted by the examiner that DeLaHuerger (US 2002/0116509 A1) is a continuation of application no. 09/170,169, filed on October 13, 1998, and is therefore considered to be suitable prior art.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:
- Jenkins et al. (USPN 6,120,298) - discloses an educational system wherein a user accumulated credit based on viewing time of educational materials.

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9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cameron Saadat whose telephone number is 703-305-5490. The examiner can normally be reached on M-F 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached on 703-308-1327. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

CS


Teresa Walberg
Supervisory Patent Examiner
Group 3700